

## OPINION SUMMARY

### MISSOURI COURT OF APPEALS EASTERN DISTRICT

SHERMAN BURNETT, JR., Appellant,	)	No. ED92543
	)	Appeal from the Circuit Court of
vs.	)	St. Louis County
	)	
STATE OF MISSOURI, Respondent.	)	Filed: December 22, 2009

### OPINION SUMMARY

Sherman Burnett (Movant) appeals from the judgment of the Circuit Court of St. Louis County denying his Rule 24.035 motion for post-conviction relief without an evidentiary hearing. Movant asserts that the motion court clearly erred in denying his claims that: (1) the sentence imposed by the plea court violated the constitutional prohibition of “cruel and unusual punishment” and was arbitrary and capricious; and (2) plea counsel provided ineffective assistance by coercing him to plead guilty.

AFFIRMED.

Division Two holds: The motion court did not err when it denied, without an evidentiary hearing, Movant’s Rule 24.035 motion. Movant’s sixty-year prison sentence did not violate the Eighth Amendment’s prohibition of “cruel and unusual” punishment because it was not “grossly disproportionate” to the severity of the crime and was within the statutorily prescribed range of punishment. Additionally, the plea court was not required to consider the factors outlined in Roper v. Simmons, 543 U.S. 551 (2001) when determining Movant’s sentence, and the plea court did not act arbitrarily and capriciously when it rejected the Division of Youth Services’ recommendation for sentencing under dual-jurisdiction law and took guidance from the victim’s impact statement. Finally, the record refuted Movant’s claim that his plea counsel was ineffective.

Opinion by: Patricia L. Cohen, J.      Sherri B. Sullivan, P.J., and Robert G. Dowd, Jr., concur.

Attorney for Appellant:      Timothy J. Forneris

Attorney for Respondent:      Shaun J. Mackelprang

<p><b>THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.</b></p>
---